

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference PBA/P089538PWO	FOR FURTHER ACTION		See item 4 below
International application No. PCT/GB2004/005440	International filing date (<i>day/month/year</i>) 20 December 2004 (20.12.2004)	Priority date (<i>day/month/year</i>) 19 December 2003 (19.12.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant THE UNIVERSITY OF SALFORD			

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).		
2.	This REPORT consists of a total of 8 sheets, including this cover sheet. In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.		
3.	This report contains indications relating to the following items:		
	<input checked="" type="checkbox"/> Box No. I	Basis of the report	
	<input checked="" type="checkbox"/> Box No. II	Priority	
	<input checked="" type="checkbox"/> Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	
	<input type="checkbox"/> Box No. IV	Lack of unity of invention	
	<input checked="" type="checkbox"/> Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	
	<input checked="" type="checkbox"/> Box No. VI	Certain documents cited	
	<input checked="" type="checkbox"/> Box No. VII	Certain defects in the international application	
	<input type="checkbox"/> Box No. VIII	Certain observations on the international application	
4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).		

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 740 14 35	Date of issuance of this report 20 June 2006 (20.06.2006)
	Authorized officer Dorothee Mülhausen Telephone No. +41 22 338 87 40

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY



To:

see form PCT/ISA/220

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/GB2004/005440

International filing date (day/month/year)
20.12.2004

Priority date (day/month/year)
19.12.2003

International Patent Classification (IPC) or both national classification and IPC
A61P35/00, A61K31/66

Applicant
THE UNIVERSITY OF SALFORD

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☒ Box No. VI Certain documents cited
- ☒ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/005440

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.
2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.
3. Additional observations, if necessary:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/005440

Box No. III Non-establishment of opinion with regard to novelty, inventive step and Industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 31- 40

because:

☒ the said international application, or the said claims Nos. 31-35 and 40 regarding industrial applicability relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

☒ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 36-40 are so unclear that no meaningful opinion could be formed (*specify*):

see separate sheet

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☐ no international search report has been established for the whole application or for said claims Nos.

☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

☐ has not been furnished

☐ does not comply with the standard

the computer readable form

☐ has not been furnished

☐ does not comply with the standard

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/005440

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	3-7,9-24,26-35
	No: Claims	1,2,8,25
Inventive step (IS)	Yes: Claims	3-7,9-24,26-35
	No: Claims	1,2,8,25
Industrial applicability (IA)	Yes: Claims	1-25
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and /or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

- 1) Claims 31-35 and 40 relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).
- 2) Claims 36-40 do not meet the requirements of Article 6 PCT in that the matter for which protection is sought is not clearly defined. The claims attempt to define the subject-matter in terms of the result to be achieved, which merely amounts to a statement of the underlying problem, without providing the technical features necessary for achieving this result.
It is unclear which kind of compounds would be suitable and which structural features they should own to achieve the claimed result, i.e. the reduction *in vivo* of the gold(III) atom to a gold(I) atom.

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

- 1) Reference is made to the following document:
D1: SCHMIDBAUR H ET AL: "SOME GOLD I COMPLEXES OF PHOSPHORUS YLIDES AND THEIR EFFECT IN GOLD THERAPY WITH THE ADJUVANT ARTHRITIS MODEL" ZEITSCHRIFT FUER NATURFORSCHUNG TEIL B ANORGANISCHE CHEMIE ORGANISCHE CHEMIE, vol. 33, no. 11, 1978, pages 1325-1329, XP009048242 ISSN: 0340-5087
Unless indicated otherwise, the relevant passages are those mentioned in the search report.
- 2) Novelty and inventive step (Art. 33(2) and 33(3) PCT)
2.1 D1 discloses a compound of pharmacological interest comprising two gold(I)

atoms, each being covalently bound to a carbon atom.

This disclosure takes away the novelty of the subject-matter of claims 1, 2, 8 and 25.

2.2 The subject-matter of claims 3-7, 9-24 and 26-35 is neither taught nor suggested in the available prior art.

- 3) For the assessment of the present claims 31-35 and 40 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Re Item VI

Certain documents cited

Certain published documents

D2: BARNARD, PETER J. ET AL: "Mitochondrial permeability transition induced by dinuclear gold(I)-carbene complexes: potential new antimitochondrial antitumour agents" JOURNAL OF INORGANIC BIOCHEMISTRY , 98(10), 1642-1647 CODEN: JIBIDJ; ISSN: 0162-0134, 2004, XP002329454

Although this document does not belong to the state of the art in the sense of Rule 64.1(b) PCT, it might disclose all the features of claims 1-40.

Re Item VII

Certain defects in the international application

- 1) Art. 6 PCT (clarity)
1.1 The subject-matter of claims 9 and 20 is unclear because the variable "n" is not

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/GB2004/005440

defined in these claims.

1.2 The subject-matter of claim 16 is unclear because the variable "m" is not defined in this claim.